

Board Administration and Regulatory Coordination Unit

Division 3. Air Resources Board

Chapter 1. Air Resources Board

Subchapter 1.25. Administrative Procedures–Hearings

Article 2. Administrative Hearing Procedures for Petitions for Review of Executive Officer Decisions

Subarticle 4. Filing and Initial Review of Petitions for Review and Executive Officer's Response

§ 60055.17. Appointment of a Hearing Officer; Initial Review of Petition.

(a) Initial Assignment:

(1) Upon receipt of a petition, the state board shall refer the matter to the administrative hearing office of the state board for assignment of a hearing officer. The hearing office shall assign an administrative law judge from the hearing office to hear the matter, unless staffing and other resources of the hearing office would prevent timely consideration of the matter. If the resources of the administrative hearing office prevent assignment, the administrative hearing office shall refer the matter to the State Office of Administrative Hearings (OAH) for assignment. For the two years immediately following the effective date of these hearing procedures, it shall be presumed that petitions requesting review of executive officer decisions ordering the recall of motor vehicles or motor vehicle engines or the suspension, revocation, or denial of executive orders certifying motor vehicles or motor vehicle engines are too resource intensive, given the present staffing of the administrative hearing office of the state board. For the two-year period identified above, such matters shall be immediately referred to the OAH for assignment.

(2) In addition to the above, a party may petition the state board to request that hearings be referred to OAH. The state board shall grant the request upon the petitioner providing substantial evidence that it could not receive a full and fair hearing from any hearing officer employed by the administrative hearing office of the state board.

(3) In all cases referred to OAH, under paragraph (2) above, the petitioner shall bear one-half of the fees charged by OAH for the services of the OAH hearing officer.

(b) Within 20 days of assignment of a hearing officer, the hearing officer shall review the petition and determine whether a hearing is required by law. Pursuant to section 60055.1(b), all petitions seeking review of executive officer decision to recall motor vehicles or engines under Health and Safety Code section 43105, to revoke or suspend a license as a vehicle emission test laboratory under Title 13, CCR, section 2048, or to revoke or suspend an Executive Order granting certification to a motor vehicle engine family under Chapter 2, Part 5, Division 26 of the Health and Safety Code shall have the right to a hearing. Petitions for review of executive officer decisions to deny applications for motor vehicle certifications shall be entitled to a hearing on the merits, unless the hearing officer finds that the petition and supporting data and information do not raise a substantial issue of fact or law. If the hearing officer determines that a hearing is not required, the petitioner shall be notified of the decision and there shall be no hearing under this article.

(c) A petitioner adversely affected by a hearing officer determination that a hearing is not required may request reconsideration by the state board under Subarticle 10.

(d) The clerk of the state board shall make arrangements to send a copy of the petition and any decision of the hearing officer or the state board to any person who was given written notice of the executive officer's decision.

NOTE: Authority cited: Sections 39600 and 39601, Health and Safety Code. Reference: *Mathews v. Eldridge*, 424 U.S. 319 (1976); and Section 43105, Health and Safety Code.

REFERENCE